

STATE OF ALASKA

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March 11, 1998

Honorable Alan Austerman
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

RIGHT OF WAY CENTRAL REGION	
Case	
File No.	
Area	
Section	
Subsection	
Block	
Lot	
Tract	
Other	
Remarks	
Fr.	

Dear Representative Austerman:

You have requested an explanation of what 44 L.D. 513 and the Act of July 24, 1947, are and whether they apply to Ginny Sargent's property. Attached are copies of those documents and our explanation follows.

44 L.D. 513 refers to the Instructions set forth at page 513 of volume 44 of the Land Decisions of the Department of the Interior issued on January 13, 1916. The Instructions were an explanation and elaboration of earlier instructions set forth at 44 L.D. 359. In essence, both Instructions set out the principle that the construction of improvements by a federal agency on public lands appropriates the land to the extent of the ground actually used and occupied by the improvements and for so long as the improvements are used and occupied by the United States. The improvements can be "roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements." 44 L.D. 513. The Instructions direct the General Land Office (now the Bureau of Land Management) to make a notation to the public land records of the existence and location of the improvements, and if the land is later disposed of the patent will contain an exception retaining the improvements and a right-of-way for them.

The purpose of the Instructions was to protect the United States' (and the public's) interest in the land in circumstances where "it seems unnecessary and inadvisable to reserve from disposition and eliminate from the entries and patents definite tracts or areas of land for the protection of such [interests]." 44 L.D. 359. In other words, the land remained open to homestead, mining and other entries, subject to the right-of-way. The notation to the land records serves two objectives: first, to provide notice to the public that the improvement is the property of the United States; and second, to facilitate the

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protection of the improvement by inserting exception clauses into any patents subsequently issued for the affected lands .

It should be noted that while the Instructions refer to the interest as existing only so long as it is used and occupied by the government, courts generally have refused to hold that the United States has effectively abandoned its property where applicable formal procedures have not been followed. Therefore, an appropriation noted under 44 L.D. 513 will not likely terminate until any applicable disposal procedures for federal improvements on the lands have been complied with.

The Act of July 24, 1947, 61 Stat.418, (formerly codified at 48 U.S.C. 321(d), and repealed by the Alaska Omnibus Act, Pub. L. 86-70, §21(d), June 25, 1959) is another right-of-way provision. It applied only to Alaska and required that for all lands in Alaska entered after that date, a right-of-way for "roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States" or the future State be reserved. Although it has been repealed, this provision has been held valid and effective to reserve a right-of-way on lands conveyed prior to the repeal. Myers v. United States, 378 F.2d 696 (Ct. Cl. 1967); Myers v. United States, 210 F. Supp. 695 (D. Alaska 1962), remanded on other grounds, 323 F.2d 580 (9th Cir. 1963).

From the information provided it is not possible to determine if these provisions have any applicability to Ms. Sargent's property. However, it may be irrelevant. DOT&PF advises that the right-of-way in question is part of an Omnibus Act road, FAS Route No. 391. I enclose a copy of the conveyance language from the Omnibus Act Quit Claim Deed and the pages on which FAS Route No. 391 is described for your information. If this is an Omnibus Act road, it may not matter whether a right-of-way also exists under RS 2477, 44 L.D. 513, the Act of July 24, 1947, or any other authority. If Ms. Sargent would like to discuss this further, she should call DOT&PF's right-of-way person, Shirley Horn, at 269-0700.

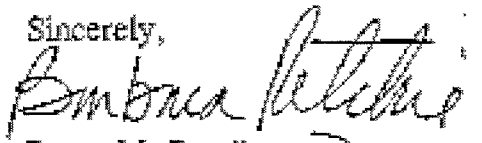
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I hope this answers your questions. Please contact me if we can be of further assistance.

Sincerely,



Bruce M. Botelho
Attorney General

cc: John Horn, Regional Director, DOT&PF
Shirley Horn, Right-of Way Section, DOT&PF
M. Clyde Stoltzfus, Special Assistant, DOT&PF

Enclosures: 4